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March 26, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, N.W.
Washington, DC 20554

RECEIVED

MAR 26 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Amendment of Section 73.202(b)
FM Table of Allotments
FM Broadcast Stations
(Lebanon Junction, Lebanon, New Haven and Springfield, Kentucky)**

Dear Ms. Dortch:

Transmitted herewith on behalf of Washington County CBS, Inc., Elizabethtown CBC, Inc. and CBC of Marion County, Inc. is an original and four (4) copies of their Petition for Rulemaking seeking the commencement of a rulemaking proceeding to amend the FM table of allotments.

Should any questions arise concerning this matter, please contact this office.

Respectfully submitted,

Howard J. Barr

Enclosures

No. of Copies rec'd 014
List ABCDE
MB 04-67

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

MAR 26 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re: Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 04-
Table of Allotments,) RM-
FM Broadcast Stations.)
)
(Springfield, Lebanon, Lebanon Junction)
and New Haven, Kentucky)

To: The Chief, Audio Division

PETITION FOR RULEMAKING

Washington County CBS, Inc., Elizabethtown CBC, Inc. and CBC of Marion County, Inc. ("Petitioners"), pursuant to Sections 1.401(a) and 1.420 of the Commission's rules, by counsel, hereby respectfully requests that Section 73.202(b) of the Commission's rules (the FM Table of Allotments) be amended as follows:

<u>Community</u>	<u>Existing</u>	<u>Proposed</u>	<u>Coordinates</u>
Lebanon Junction, KY	297A	274A	N 37-46-07 W 85-35-57 13.8 km SE (122 Deg T)
New Haven, KY	-----	297A	N 37-43-00 W 85-42-38 12.4 km NW (301.8 Deg T)
Springfield, KY	274A	265A	N 37-38-50 W 85-11-50 4.7 km SE (152 Deg T)
Lebanon, KY	265C3	-----	Downgrade of WLSK to 265A at the same reference point proposed in a rulemaking petition by Rodgers Broadcasting requesting the reallocation of station WIFE to Norwood, OH.

Concurrent with this relief, Petitioners further request that the license of station: WAKY-FM, Springfield, Kentucky be modified to specify operation on Channel 274A with a community of license of Lebanon Junction, Kentucky rather than Springfield; WTHX(FM), Lebanon Junction, Kentucky, be modified to specify operation on Channel 297A with a community of license of New Haven, Kentucky as its first local aural transmission service rather than Lebanon Junction; the license of station WLSK(FM), Lebanon, Kentucky, be modified to specify operation on Channel 265C3 with a community of license of Springfield, Kentucky maintaining its first local aural transmission service rather than Lebanon.¹ The following is shown in support thereof:

1. As shown in the attached Technical Report, these allotments may be made in compliance with the Commission's current separation and allocation requirements and that the proposed allocations are mutually exclusive with the existing licensed facilities.² The Technical Report further demonstrates that the reallocation proposed herein would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

LEBANON JUNCTION, KENTUCKY

2. As demonstrated in the Technical Report, Channel 274A can be substituted for Channel 297A for use by WAKY-FM at Lebanon Junction at the current licensed coordinates for WLSK(FM). The proposed allocation site will provide a 70 dBu service to all of Lebanon Junction and is in satisfaction of the Commission's spacing requirements and line of site requirements.³

¹ WAKY-FM is licensed to Washington County CBS, Inc. WTHX(FM) is licensed to Elizabethtown CBC, Inc. WLSK(FM) is licensed to CBC of Marion County, Inc. Each of the foregoing is a wholly owned subsidiary of Petitioners Broadcasting Corporation. No involuntary changes are requested here.

² Exhibit One, Technical Report of Charles M. Anderson.

³ Technical Report at Exhibits E-1A, E-1B and E-1C.

3. This proposal would remove the sole local service from Springfield, Kentucky, however, as discussed herein, Petitioners propose the allotment of Channel 265A (WLSK(FM)) to Springfield such that the Springfield community will not be without its first local service.

4. The proposed reallocation of WAKY-FM on 274A from Springfield, KY to Lebanon Junction at the reference coordinates will serve a population of 103,044 within the 60 dBu contour. When the loss area's (1,395 sq km) population of 23,757 is deducted from the gain area's (1,416 sq km) population of 71,359, the net 60 dBu population gain is 47,602 (+76%). The loss area that will be created by this proposed reallocation will continue to be served by at least five (5) fulltime aural services and will therefore remain well served.⁴

SPRINGFIELD, KENTUCKY

5. As demonstrated in the Technical Report, Channel 265C3 can be substituted for Channel 274A for use by WLSK(FM), currently allocated to Lebanon, at Springfield at the coordinates specified in n.1 of this rulemaking petition. The proposed allocation site will provide a 70 dBu service to all of New Haven and is in satisfaction of the Commission's spacing requirements and line of site requirements.⁵

6. Lebanon, Kentucky will continue to receive local service from WLBN(AM), Facility ID No. 36883, of which CBC of Marion County, Inc. is also the licensee. The proposed change will not therefore deprive Lebanon of its only local transmission service.

NEW HAVEN, KENTUCKY

7. As demonstrated in the Technical Report, Channel 265C3 can be allocated to New Haven as a first local service for Channel 297A for use by WTHX(FM) at New Haven at the current licensed coordinates for WTHX(FM). The proposed allocation site will provide a 70 dBu service to all of New Haven and is in satisfaction of the Commission's spacing and line of site requirements.⁶

⁴ Technical Report at Exhibit E-1D. The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Nov. 29, 1983). See also *La Grange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

⁵ Technical Report at Exhibits E-3A, E-3B and E-3C.

⁶ Technical Report at Exhibits E-2A, E-2B and E-2C.

8. This proposal would remove the sole local service from Lebanon Junction, Kentucky, however, as discussed herein, Petitioners propose the allotment of Channel 274A (WAKY(FM)) to Lebanon Junction such that the Lebanon Junction community will not be without its first local service.

9. In addition to providing a first local service to New Haven, the proposed reallocation of WTHX(FM) on 297A from Lebanon Junction, KY to New Haven, KY will also result in a population gain of 1,271. The loss area that will be created by this proposed reallocation will continue to be served by at least five (5) fulltime aural services and will therefore remain well served.⁷

10. With channels presently allotted to them, Springfield and Lebanon Junction are unquestionably communities for allotment purposes. Moreover, both communities are census designated places. Springfield has a population of 2,634 (2000 U.S. Census) while Lebanon Junction has a population of 1,801 (2000 U.S. Census). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 100 (1982) (requirement of an allotment to a community is generally satisfied if the community is either incorporated or listed in the U.S. Census).

11. New Haven is an incorporated place with a population of 849 persons (2000 U.S. Census). *Id.* New Haven is home to a number of businesses and organizations, including Kentucky Railway Museum, Rolling Fork Christian Church, St. Catherine Elementary School, Sherwood Inn, the Rolling Fork Iron Horse Festival, and Fox Hollow Pottery.

12. WTHX(FM) will provide this independent, thriving and growing community with an important outlet for local information and a means to further stimulate local economic growth.

13. Substitution of New Haven for Lebanon Junction as WTHX(FM)'s community of license will result in a preferential arrangement of allotments, pursuant to *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982); *Amendment of the Commission's*

⁷ Technical Report at Exhibit E-2D. The Commission has considered five or more reception services to be "abundant" *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Nov. 29, 1983). *See also La Grange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989). The substitution would provide New Haven, Kentucky with its first local aural transmission service (fulfilling the Commission's third priority for FM allocations), while Lebanon Junction will continue to receive local service by virtue of the proposed Channel 274A allocation for use by WAKY-FM. The proposed change will not deprive Lebanon Junction with of its only local transmission service.

14. In sum, the reallocation proposed herein will result in a first local service for New Haven and a significant increase in the area and population to be served by WMSK-FM. On the other hand, no community will lose local service. Furthermore, as discussed previously the allotment can be made without the creation of a loss area. Accordingly, we respectfully submit that the allotment proposed herein will serve the public interest and should be implemented.

15. The proposed Springfield and Lebanon backfill allotments do not raise the concerns the Commission voiced when it directed the Media Bureau to cease from the practice of allotting new "backfill" FM allotments to "preserve" a community's sole local transmission service since no new allotments are proposed here. *Refugio, Texas*, 18 FCC Rcd 2291 ¶ 15 (2003) (an uncertain and time consuming process; intractable spectrum entanglements). The backfills proposed here involve currently licensed and operating stations that can be reallocated to the communities being vacated in compliance with local service floor requirements. *Id.*

16. Petitioners certify that it they a present intention to apply for the new channels when allotted, and that, when authorized, will simultaneously modify the facilities promptly to commence operation on Channel 274A at Lebanon Junction, 265A at Springfield and Channel 297A at New Haven.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the Commission commence a rule making proceeding to reallocate Channel 297A from Lebanon Junction to New Haven, Channel 274A from Springfield to Lebanon Junction and Channel 265C3 from Lebanon to Springfield and to modify the licenses of WAKY-FM to specify

operation on Channel 274A at Lebanon Junction, Kentucky; WTHX(FM) to specify operation on Channel 297A at New Haven, Kentucky; and WLSK(FM) at Springfield, Kentucky.

Respectfully submitted,

Washington County CBS, Inc.,
Elizabethtown CBC, Inc. and
CBC of Marion County, Inc.

By: 

John F. Garziglia
Howard J. Barr
Their Attorneys

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March 26, 2004

WASHINGTON 110700v3

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Cell 270-535-4432

TECHNICAL REPORT

This **Technical Report** has been developed in support of a proposed rulemaking requesting the reallocation of WAKY-FM on 274A from Springfield, KY to Lebanon Junction, KY; WTFX(FM) on 297A from Lebanon Junction, KY to New Haven, KY as a first local aural service and WLSK(FM) on 265A from Lebanon, KY to Springfield, KY to sustain the existing first aural service now provided by WAKY-FM. Lebanon, Ky will continue to receive a local aural service from WLBN(AM) on 1590 kHz. All of the proposed changes are entirely mutually exclusive with the licensed facilities (See E-1A, E-2A and E-3A).

I. Summary of Proposed Allocations Changes:

<u>Community</u>	<u>Existing</u>	<u>Proposed</u>	<u>Coordinates</u>
Lebanon Junction, KY	297A	274A	N 37-46-07 W 85-35-57 13.8 km SE (122 Deg T)
New Haven, KY	-----	297A	N 37-43-00 W 85-42-38 12.4 km NW (301.8 Deg T)
Springfield, KY	274A	265A	N 37-38-50 W 85-11-50 4.7 km SE (152 Deg T)
Lebanon, KY	265C3	-----	Downgrade of WLSK to 265A at the same reference point proposed in a rulemaking petition by Rodgers Broadcasting requesting the reallocation of station WIFE to Norwood, OH.

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II. Population and area gain for proposed reallocations:

The proposed reallocation of WAKY-FM on 274A from Springfield, KY to Lebanon Junction at the reference coordinates will serve a population of 103,044 within the 60 dBu contour. When the loss area's (1,395 sq km) population of 23,757 is deducted from the gain area's (1,416 sq km) population of 71,359, the net 60 dBu population gain is 47,602 (+76%).

At the same time, the proposed reallocation of WTHX (FM) on 297A from Lebanon Junction, KY to New Haven, KY as a first local aural service will also result in a small population gain of 1,271.

The reallocation of WLSK(FM) from Lebanon, KY to Springfield to retain the existing local aural service there does not result in any change from that already proposed and agreed to by the licensee in a petition for rulemaking requesting the reallocation of station WIFE from Connersville, IN to Norwood, Ohio.

III. Allocation Analyses:

Exhibits E-1A, E1B and E1C demonstrate that the proposed reallocation of WAKY-FM to Lebanon Junction, KY will meet Section 73.207 spacing requirements and Section 73.315 requirements for 70 dBu service over the community and line of sight from the reference point to the community. Exhibit E-1D demonstrates that the loss area will continue to receive at least five (5) fulltime aural services.

Exhibits E-2A, E2B and E2C demonstrate that the proposed reallocation of WTHX(FM) to New Haven, KY will meet Section 73.207 spacing requirements and

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Section 73.315 requirements for 70 dBu service over the community and line of sight from the reference point to the community. The small loss area will continue to receive five (5) fulltime aural services (See E-2D).

Exhibits E-3A, E3B and E3C demonstrate that the proposed reallocation of WLSK(FM) to Springfield, KY will meet Section 73.207 spacing requirements and Section 73.315 requirements for 70 dBu service over the community and line of sight from the reference point to the community. This modification has already been proposed in a petition for rulemaking requesting the reallocation of WIFE(FM) from Connersville, IN to Norwood, OH where WLSK consented to a voluntary downgrade and site specification.

All allocation studies were conducted utilizing V-Soft's FMCONT, PROBE III and 30 second terrain database.

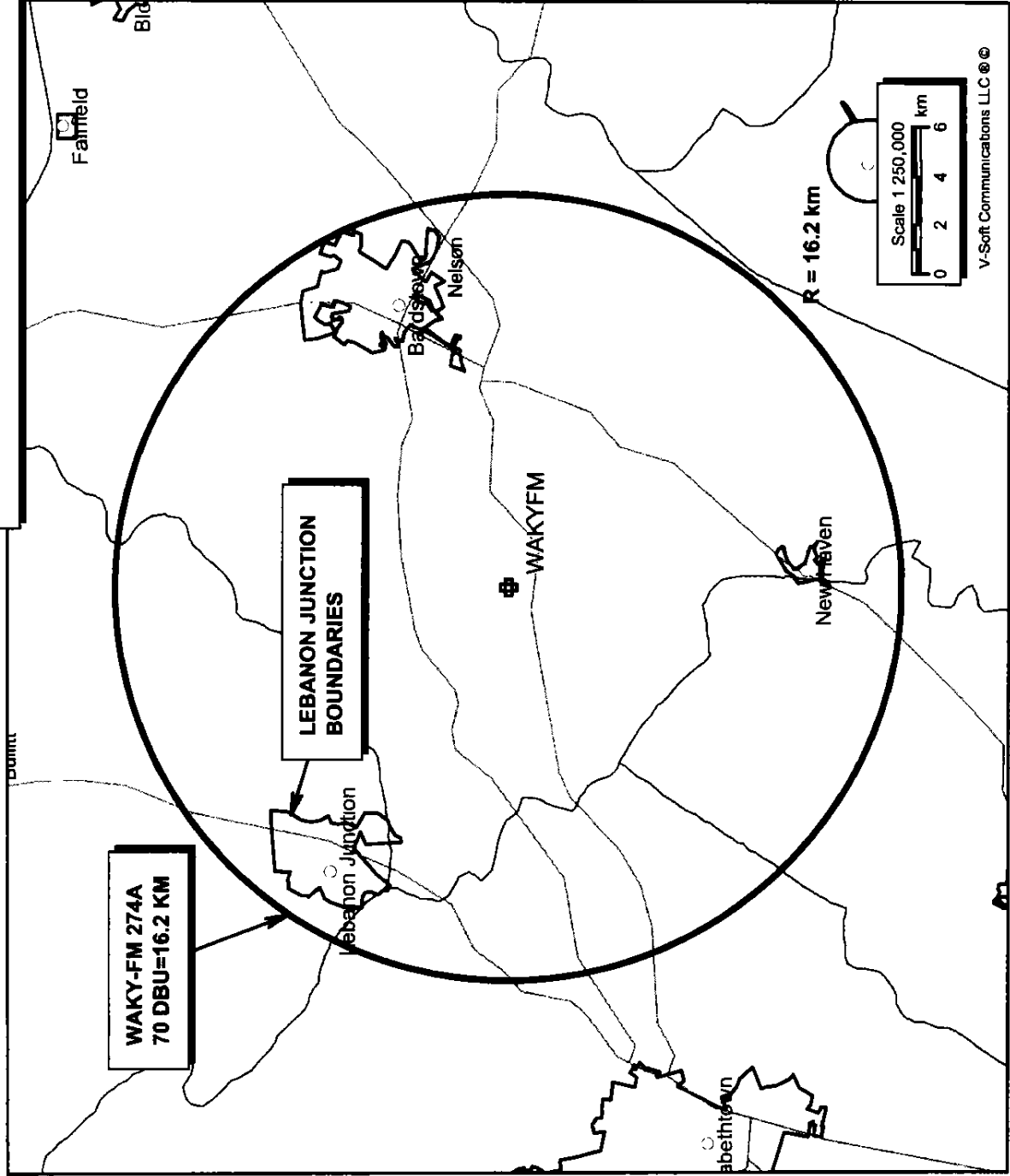
IV. Conclusion:

It is concluded that the proposed reallocations meet all applicable Commission rules and policies, and will result in an increase of population served of 72,547 (+47.8%) and area served of 48,873 while providing a first local aural service to the community of New Haven, KY.



Charles M. Anderson March 25, 2004

CHARLES M. ANDERSON AND ASSOCIATES



E-1B

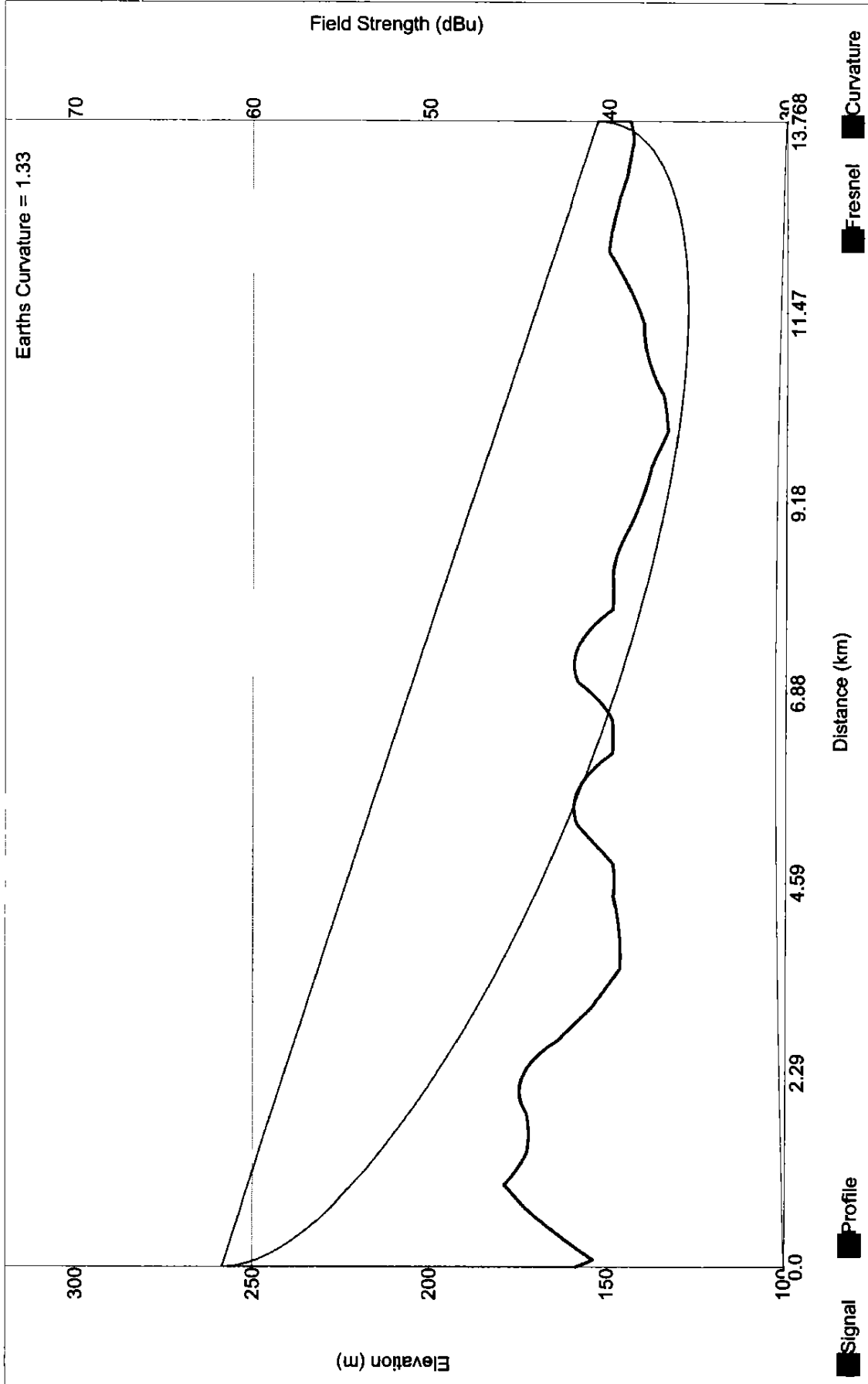
WAKYFM

BLH20030501ABI

Latitude 37-46-07 N

Longitude 085-35-57 W

E-1C WAKY-FM LINE OF SIGHT TO LEBANON JUNCTION



Starting Latitude: 37-46-07 N
Starting Longitude: 085-35-57 W

End Latitude: 37-50-04 N
End Longitude: 085-43-54 W

Distance: 13.768247769 km
Bearing: 302.094 deg

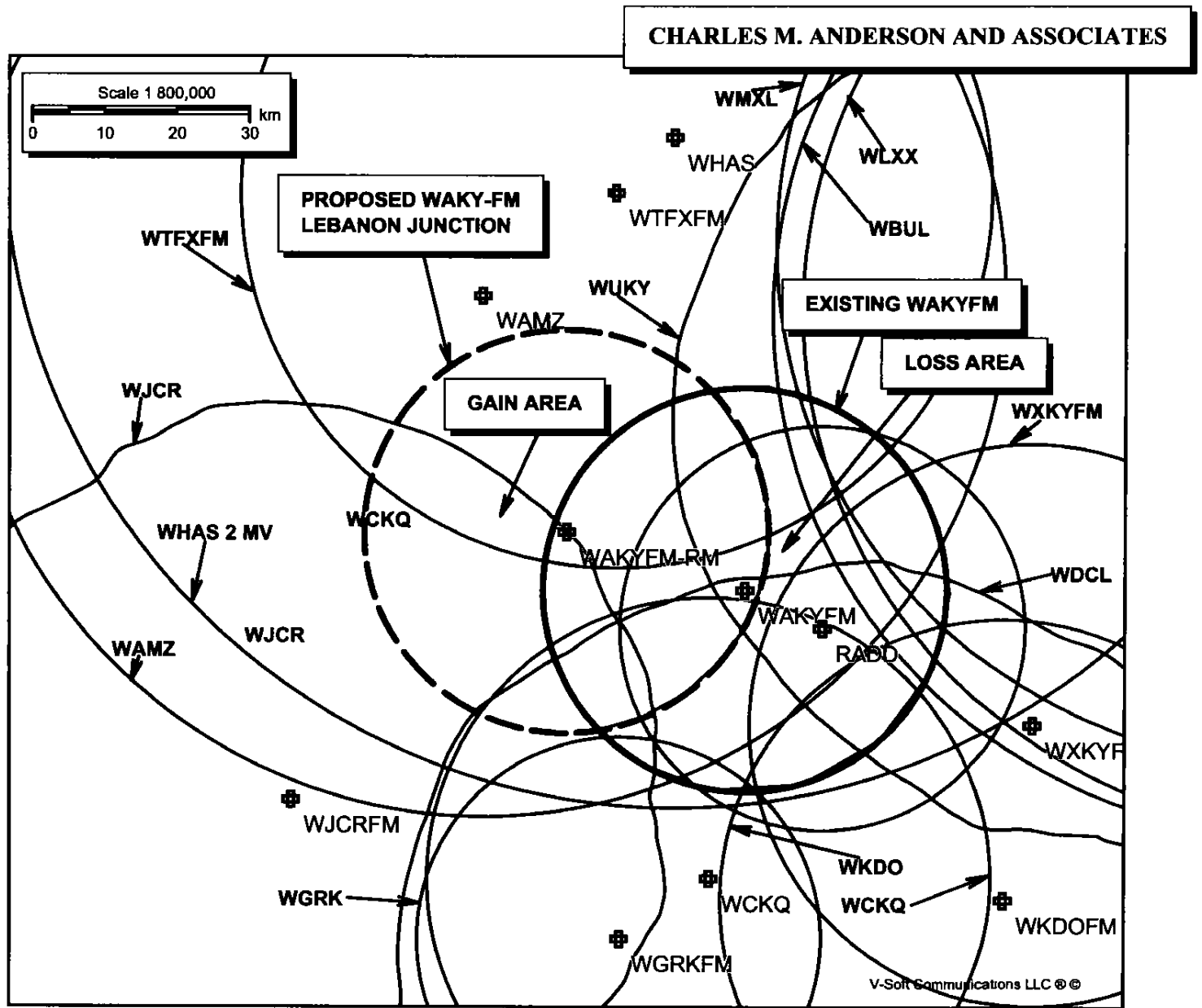
Transmitter Height (AG) = 100.0 m
Receiver Height (AG) = 9.1 m

Transmitter Elevation = 158.7 m
Receiver Elevation = 144.0 m

Frequency = 102.7 MHz
Fresnel Zone: 0.6

E-1D

WAKYFM-RM
BLH20030501ABI
Latitude 37-46-07 N
Longitude 085-35-57 W



E-2A

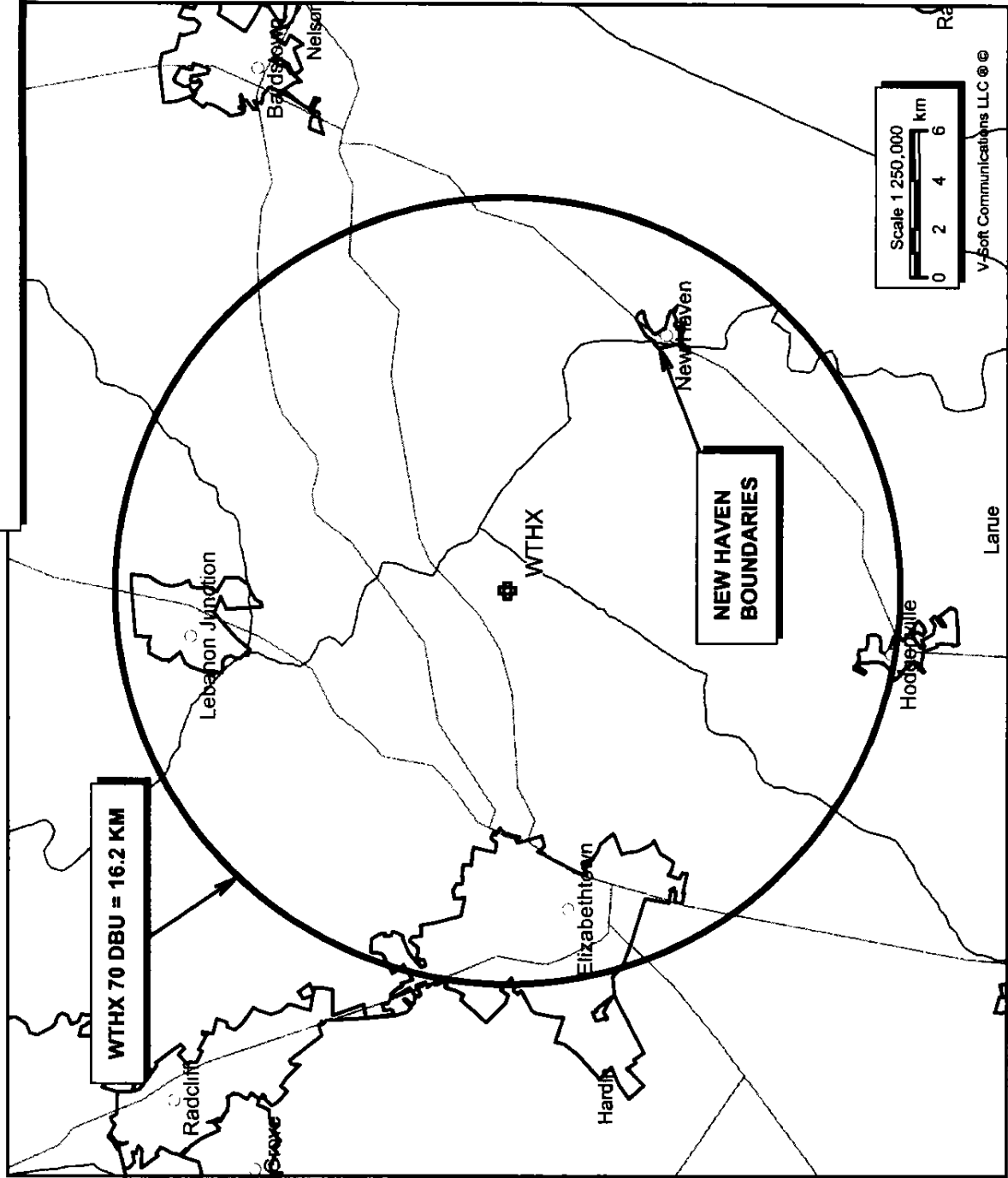
REFERENCE
37 43 00 N
85 42 38 W

CLASS = A
Current Spacings
Channel 297 - 107.3 MHz

DISPLAY DATES
DATA 03-25-04
SEARCH 03-26-04

Call	Channel	Location	Dist	Azi	FCC	Margin
WTHX	LIC 297A	Lebanon Junction	KY 10.38	284.9	114.5	-104.12
WUHU	LIC-N 296C2	Smiths Grove	KY 108.44	206.7	105.5	2.94
WCTTFM	LIC 297C2	Corbin	KY 170.32	121.7	165.5	4.82
WVEZ	LIC 295B	Louisville	KY 73.43	352.1	68.5	4.93
WSFR	LIC 299B1	Corydon	IN 53.77	340.7	47.5	6.27
WHIRFM	LIC-N 296A	Danville	KY 83.23	93.0	71.5	11.73
WHIRFM	CP 296A	Danville	KY 85.41	86.5	71.5	13.91
WHHT	LIC 294A	Horse Cave	KY 55.51	194.5	30.5	25.01
WRZQFM	LIC-N 297B1	Greensburg	IN 167.61	358.9	142.5	25.11
RDEL	DEL 243A	Corydon	IN 61.45	334.2	9.5	51.95
RADD	ADD 243A	Lanesville	IN 61.45	334.2	9.5	51.95
WGZBFM	LIC 243A	Corydon	IN 61.45	334.2	9.5	51.95
WGZBFM	APP 243A	Corydon	IN 61.45	334.2	9.5	51.95
WRVW	LIC 298C1	Lebanon	TN 187.86	211.1	132.5	55.36
WRVW.A	APP 298C1	Lebanon	TN 187.87	211.1	132.5	55.37
WYXY	LIC-Z 296A	Boonville	IN 140.46	282.9	71.5	68.96
WKYRFM	LIC 300A	Burkesville	KY 106.88	164.0	30.5	76.38
WBTF	LIC-N 300A	Midway	KY 107.99	60.1	30.5	77.49
WIOK	LIC 298A	Falmouth	KY 152.71	50.2	71.5	81.21
WKFS	LIC-N 296B1	Milford	OH 187.83	33.7	95.5	92.33
WBVRFM	LIC-N 244C2	Auburn	KY 108.44	206.7	14.5	93.94
WABX	LIC-Z 298A	Evansville	IN 168.72	280.9	71.5	97.22
WDDDFM	LIC 297B	Marion	IL 284.23	271.8	177.5	106.73
RDEL	DEL 297B	Marion	IL 284.23	271.8	177.5	106.73
RADD	ADD 297B	Johnston City	IL 284.23	271.8	177.5	106.73
WLFX	LIC-Z 294A	Berea	KY 137.90	92.1	30.5	107.40
WORXFM	LIC 244A	Madison	IN 117.85	14.8	9.5	108.35
WKZP	LIC 297A	Spencer	TN 228.26	175.7	114.5	113.76
WKXDFM	LIC-Z 295C2	Monterey	TN 181.93	166.8	54.5	127.43
WYMV	LIC 295A	Madisonville	KY 159.69	257.0	30.5	129.19

CHARLES M. ANDERSON AND ASSOCIATES



E-2B

WTHX

BLH20030321ABB

Latitude 37-43-00 N

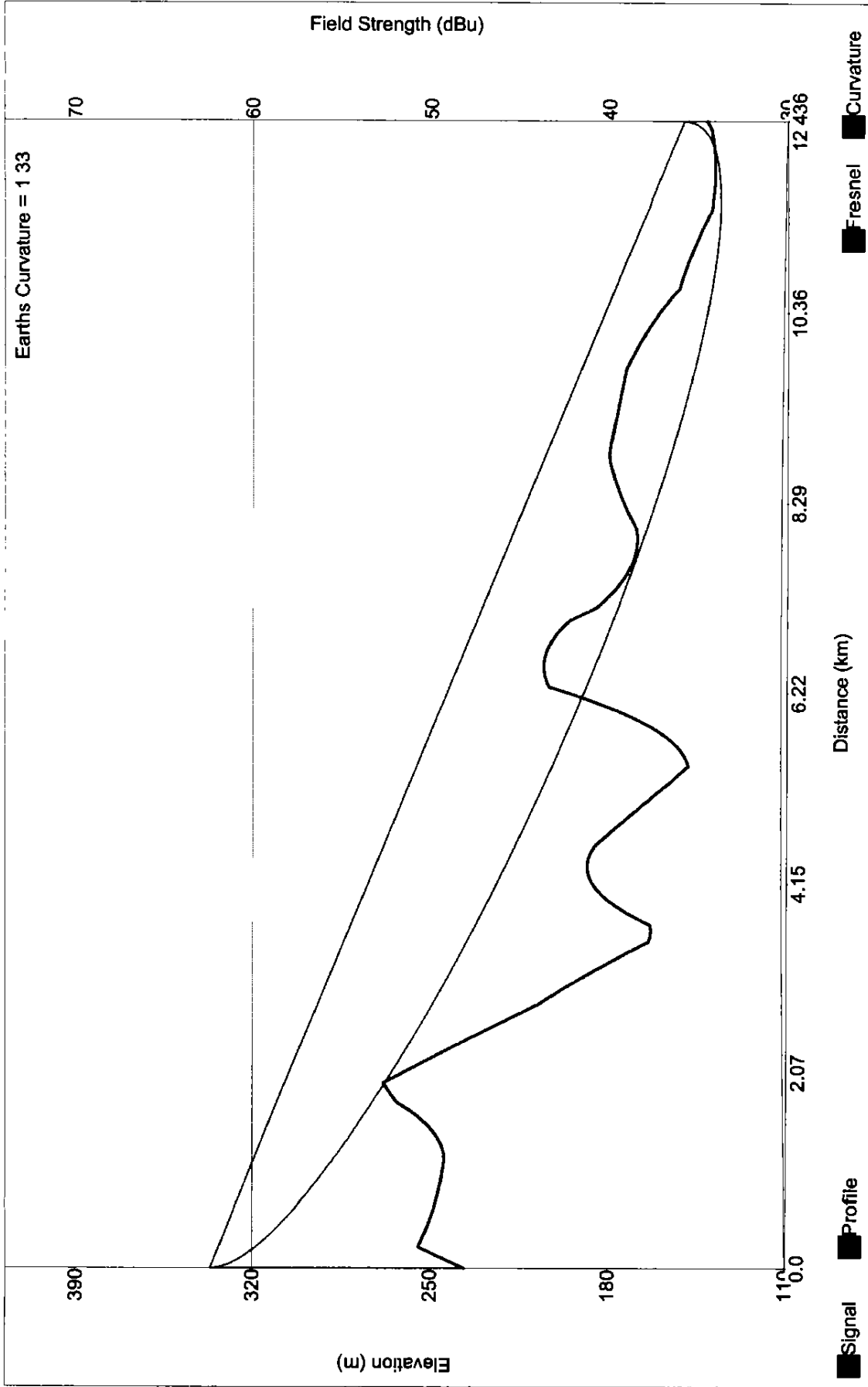
Longitude 085-42-38 W

ERP: 6 00 kW

Channel 297

Frequency: 107.3 MHz

E-2C WTHX 297A LINE OF SIGHT TO NEW HAVEN



Starting Latitude: 37-43-00 N End Latitude: 37-39-27 N Distance: 12.435526165 km
Starting Longitude: 085-42-38 W End Longitude: 085-35-27 W Bearing: 121.838 deg

Transmitter Height (AG) = 100.0 m Transmitter Elevation = 236.5 m Frequency = 107.3 MHz
Receiver Height (AG) = 9.1 m Receiver Elevation = 141.7 m Fresnel Zone: 0.6

Longitude 085-35-57 W

**WTHX LOSS AREA
RECEIVES FIVE
OR MORE FULLTIME
SERVICES**

E-3A

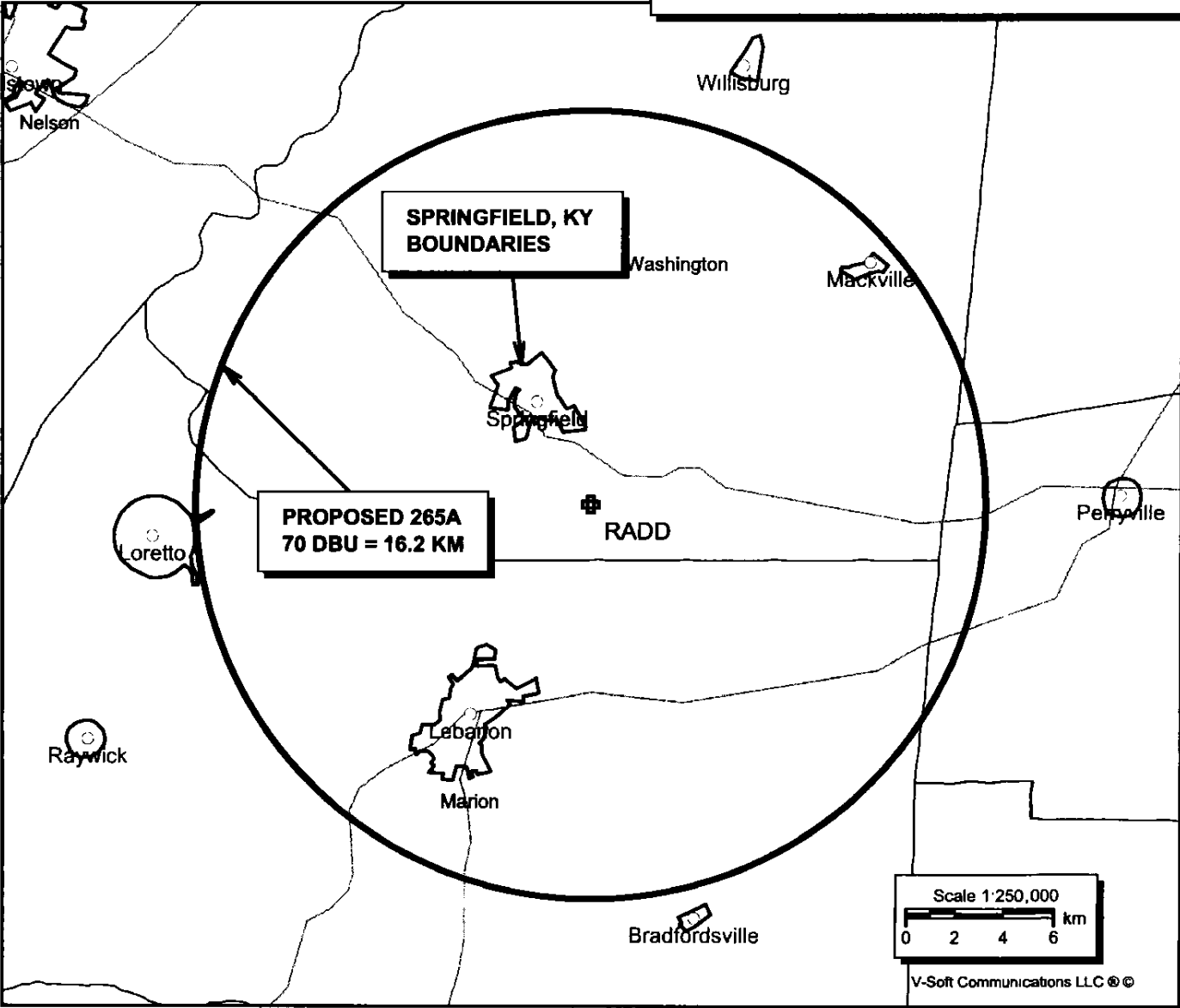
REFERENCE
37 38 50 N
85 11 50 W

CLASS = A
Current Spacings
Channel 265 - 100.9 MHz

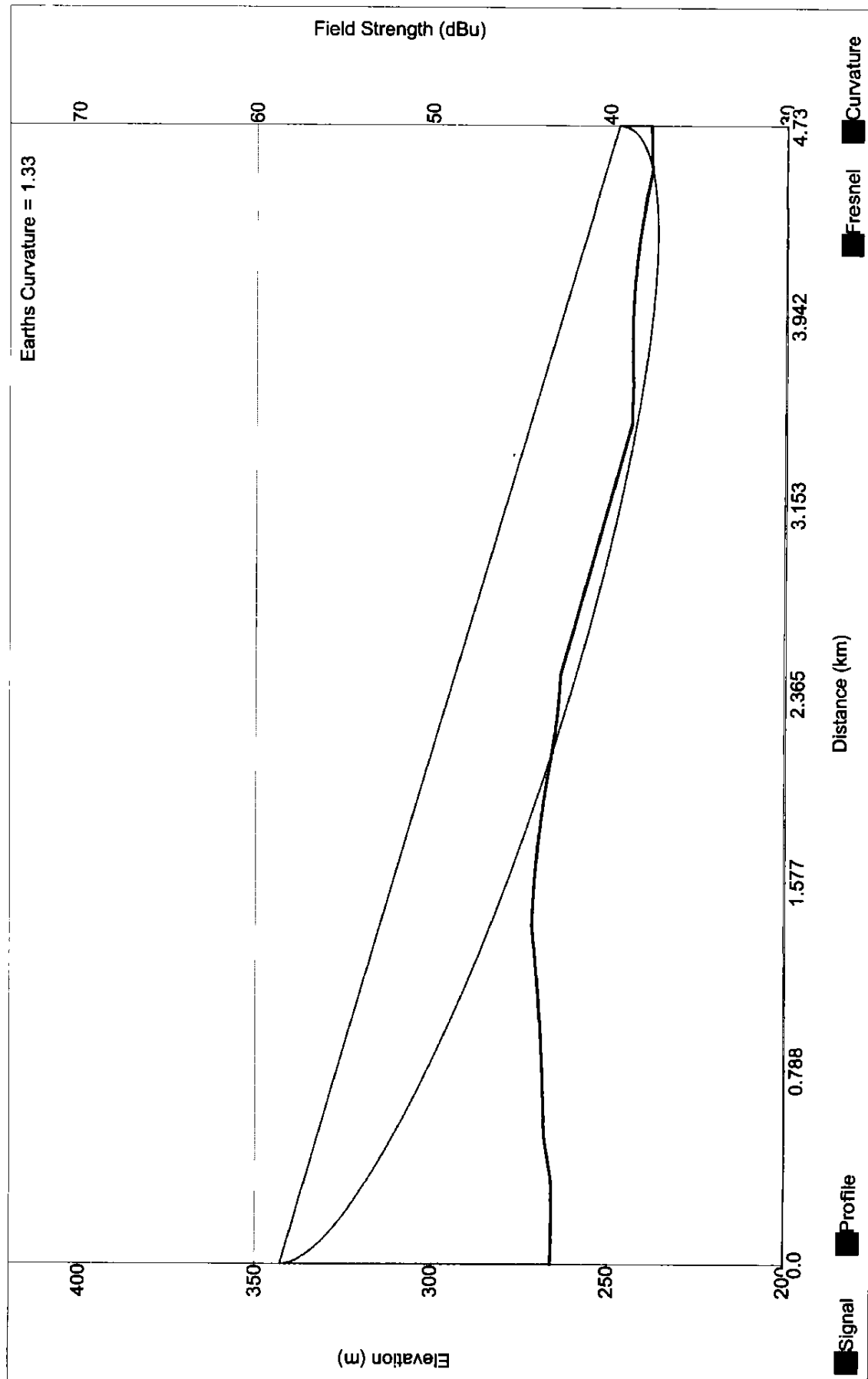
DISPLAY DATES
DATA 03-25-04
SEARCH 03-26-04

Call	Channel	Location	Dist	Azi	FCC	Margin
WLSK	LIC-Z 265C3	Lebanon	KY 11.94	296.7	141.5	-129.56
RDEL	DEL 265C3	Lebanon	KY 11.94	296.7	141.5	-129.56
RADD	ADD 265A	Lebanon	KY 0.00	0.0	114.5	-114.50
WCYO	LIC-N 264C3	Irvine	KY 92.54	88.7	88.5	4.04
WTFXFM	LIC-N 263C2	Louisville	KY 66.87	335.0	54.5	12.37
RADD	ADD 265A	Madison	IN 130.66	355.6	114.5	16.16
WBDC	LIC 265B1	Huntingburg	IN 162.15	293.2	142.5	19.65
WSGS	LIC 266C	Hazard	KY 185.42	105.2	164.5	20.92
WKIX	LIC-N 264C3	Brownsville	KY 113.90	241.6	88.5	25.40
WLRO	LIC-N 268C3	Richmond	KY 80.98	71.1	41.5	39.48
WRZI.C	CP -D 268A	Vine Grove	KY 72.71	276.5	30.5	42.21
WRZI	LIC 268A	Vine Grove	KY 72.71	276.5	30.5	42.21
WMJM	LIC-N 267A	Jeffersontown	KY 75.30	329.2	30.5	44.80
WUBT	LIC 266C1	Russellville	KY 181.70	227.1	132.5	49.20
WJCRFM	LIC 211C1	Upton	KY 77.41	252.3	21.5	55.91
RDEL	DEL 265A	Erlanger	KY 171.22	18.8	114.5	56.72
WIZF	LIC 265A	Erlanger	KY 171.22	18.8	114.5	56.72
ALLO	VAC 266A	Madison	IN 130.66	355.6	71.5	59.16
RDEL	DEL 266A	Madison	IN 130.66	355.6	71.5	59.16
WOKIFM	LIC 262C	Oak Ridge	TN 182.42	151.6	94.5	87.92
WVFB	LIC 268A	Celina	TN 126.19	196.7	30.5	95.69
RADD	ADD 266A	Erlanger	KY 171.22	18.8	71.5	99.72
WUSY	LIC 264C	Cleveland	TN 270.86	181.7	164.5	106.36
WKKG	LIC 268B	Columbus	IN 183.09	339.3	68.5	114.59
WECOFM	LIC-N 267C3	Wartburg	TN 169.57	162.3	41.5	128.07
WYJZ.C	CP 265A	Speedway	IN 250.96	342.6	114.5	136.46
ALLO	RSV 265A	Speedway	IN 252.10	339.5	114.5	137.60
WVVR	LIC 262C	Hopkinsville	KY 232.66	251.2	94.5	138.16
WVVR.C	CP -D 262C	Hopkinsville	KY 232.66	251.2	94.5	138.16
970724	APP 266A	Bloomfield	IN 210.63	317.8	71.5	139.13

E-3B
WLSK
RADD
Latitude: 37-38-50 N
Longitude: 085-11-50 W
ERP 6 00 kW
Channel 265
Frequency: 100.9 MHz



E-3C 265A LINE OF SIGHT TO SPRINGFIELD



Starting Latitude: 37-38-50 N	End Latitude: 37-41-06 N	Distance: 4.73 km
Starting Longitude: 085-11-50 W	End Longitude: 085-13-19 W	Bearing: 332.00 deg
Transmitter Height (AG) = 76.8 m	Transmitter Elevation = 266.0 m	Frequency = 100.9 MHz
Receiver Height (AG) = 9.1 m	Receiver Elevation = 238.3 m	Fresnel Zone: 0.6